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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/347,525	07/06/1999	MASAHARU OKU	103778	3980

25944 7590 02/26/2003

OLIFF & BERRIDGE, PLC  
P.O. BOX 19928  
ALEXANDRIA, VA 22320

EXAMINER
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KNABLE, GEOFFREY L

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 02/26/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/347,525

Applicant(s)

OKU ET AL.

Examiner

Geoffrey L. Knable

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1733

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2002.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8 and 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_      6) ☐ Other: \_\_\_\_\_

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1. Receipt is acknowledged of the Appeal Brief filed 12-17-02. Upon further review of the final rejection, however, it is apparent that the examiner inadvertently did not include the optional secondary references (added to the main rejection) in the final rejection of dependent claims 3, 4, 14 and 15 and thus this action has withdrawn the finality of the last office action in order to include these omitted references. Further, since the main rejection (of claims 1+) is under 35 USC 103 (rather than 102/103 as originally in the first office action), the rejection of the dependent claims 3, 4, 14 and 15 should have been rolled into the main rejection resulting in a single common grounds of rejection of all the claims. Also, the examiner has newly noticed that claims 13-15 (which are essential duplicates of claim 5, now cancelled claim 5 being previously included within claim 1) raise issues of indefiniteness and/or do not further limit claim 1 and thus a new ground of rejection on this ground is also necessary. The office action to follow will include these changes (but it should be stressed that the substantive art rejection is in essence unchanged). Because the new rejection of dependent claims 13-15 was not necessitated by amendment, this rejection also will not be made final.

2. Claims 7 and 9-12 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

3. Claims 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of claims 13-15 duplicate the language of original (now canceled) claim 5, it being noted that the substance of original claim 5 was previously incorporated into claim 1. It therefore is not clear how claims 13-15 further limit the claims from which they depend. If they are considered to further limit, then clarification is required of how they further limit.

Additionally and somewhat along the same lines, with the amendments to claim 1 as well as the substance of claims 2-4, the antecedent for "the rubber material extruded through the extruder as a band-shaped rubber member..." in each of claims 13-15 is ambiguous given that claims 1-4 define several "band shaped rubber members" and it is not clear which is being referenced. Further, the fact that claim 1 already defines the band shaped rubber members therein as having overlapped edges, this further confuses the issue of determining exactly what members are being described in claims 13-15. Clarification is required.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-4, 6, 8 and 13-15 are rejected under 35 U.S.C. 103(a) as obvious over Deist (US 3,170,499) taken alone or further in view of Hanson (US 2,849,049) and Okada (US 6,039,826).

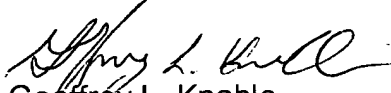
These references are applied for the same reasons already of record in the final rejection. The examiner's comments from the advisory action (paper #15) are also incorporated by reference herein.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geoffrey L. Knable whose telephone number is 703-308-2062. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

  
Geoffrey L. Knable  
Primary Examiner  
Art Unit 1733

G. Knable  
February 22, 2003